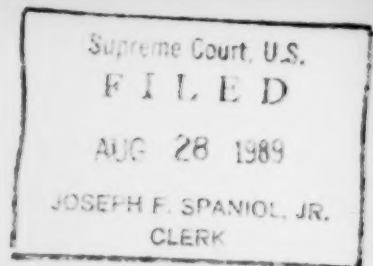


89-982



NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

EDWARD P. SINDAK, Petitioner

v.

STATE OF IDAHO, Respondent

ON PETITION FROM THE SUPREME COURT OF IDAHO

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

STEPHEN L. BEER
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NO. 89-982

Supreme Court, U.S.

FILED

AUG 28 1989

JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

EDWARD P. SINDAK, Petitioner

v.

STATE OF IDAHO, Respondent

AFFIDAVIT OF SERVICE BY MAIL

STEPHEN L. BEER, Being first duly sworn
upon oath, deposes and states:

That he is a member of the Bar of the
United States Supreme Court, representing the
Petitioner on whose behalf service of the fore-
going documents has been made and hereby cer-
tifies that on the 13th day of December, 1989,
all parties have been served in compliance with
Supreme Court Rule 28, by depositing three (3)
copies of the foregoing document in the United
States Post Office, postage prepaid, addressed
to counsel of record at the following address:

OFFICE OF THE ATTORNEY GENERAL
State of Idaho
Statehouse Mail
Boise, Idaho 83720.

Stephen L. Beer

STEPHEN L. BEER

STATE OF IDAHO)
 : ss
County of Ada)

SUBSCRIBED AND SWORN TO Before me this 13 day
of December, 1989.

151

Notary Public for Idaho
Residing at Boise, Idaho
Commission expires 3/18/94

QUESTION PRESENTED FOR REVIEW

Whether Idaho Code §18-1509 is unconstitutionally vague?

PARTIES INVOLVED (per Rule 21.1(b)1)

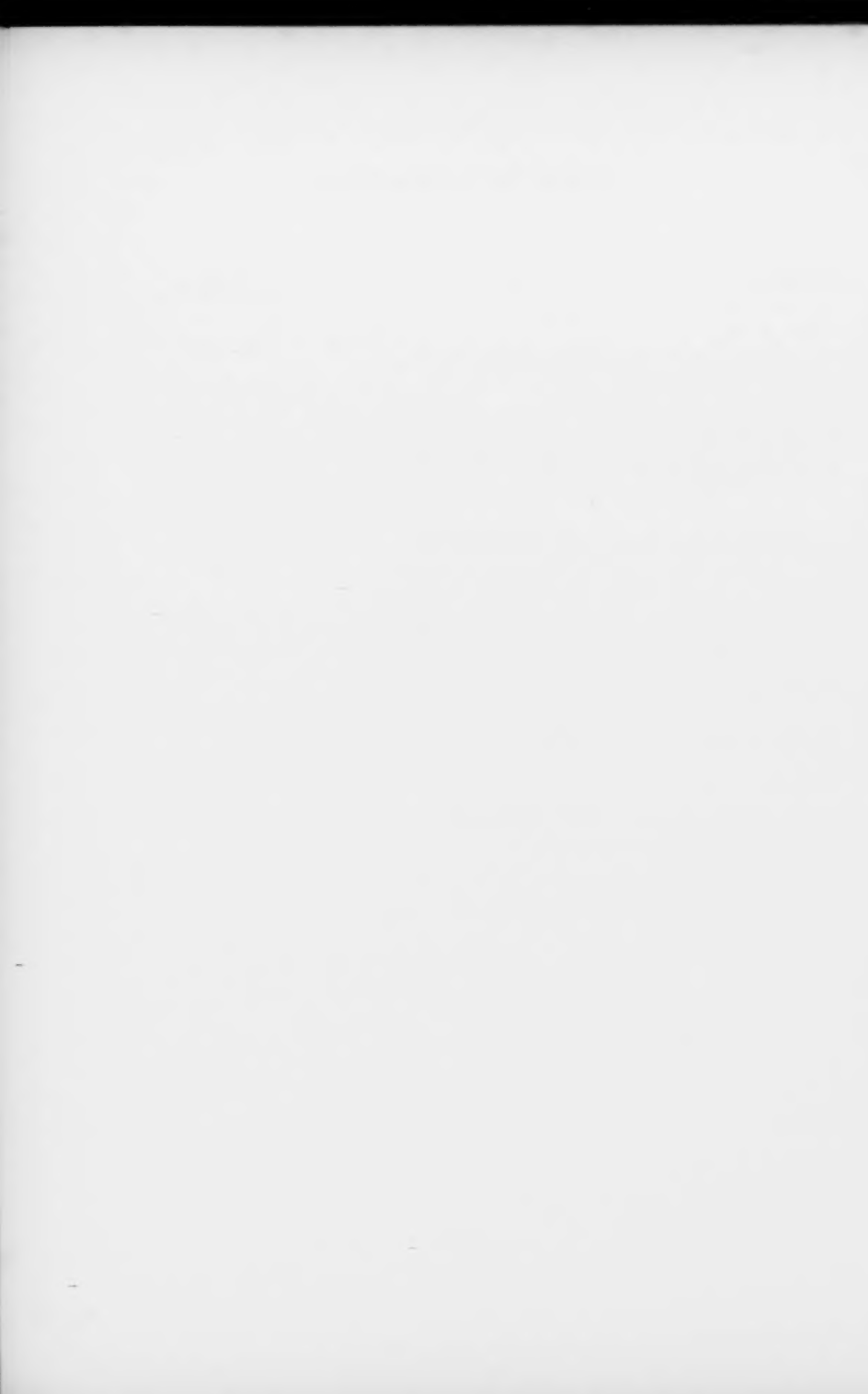
Petitioner, Edward P. Sindak, was the defendant in the District Court of Ada County, Idaho, appellant in the District Court of Ada County, appellant in the Idaho Court of Appeals, and respondent in the Idaho Supreme Court and petitioner in the Petition For Rehearing in the Idaho Supreme Court. Respondent, The State of Idaho was plaintiff in the District Court of Ada County, Idaho, appellee in the District Court of Ada County, and appellee in the Idaho Court of Appeals, appellee in the Supreme Court of Idaho and respondent in the Supreme Court of Idaho.

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OCTOBER TERM, 1989

EDWARD P. SINDAK, Petitioner

v.

STATE OF IDAHO, Respondent

ON PETITION FROM THE SUPREME COURT OF IDAHO

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

Petitioner, Edward P. Sindak, (hereafter defendant), prays that a writ of certiorari issue to review the appeals from the final judgment by the Idaho Supreme Court dated May 9, 1989. Defendant's Petition For Rehearing was denied by the Court on June 29, 1989. The Idaho Supreme Court held Idaho Code §18-1509 was not unconstitutional as being in contrast to the "void for vagueness" doctrine as enunciated by this court.



JUDGMENT, OPINION AND ORDER BELOW

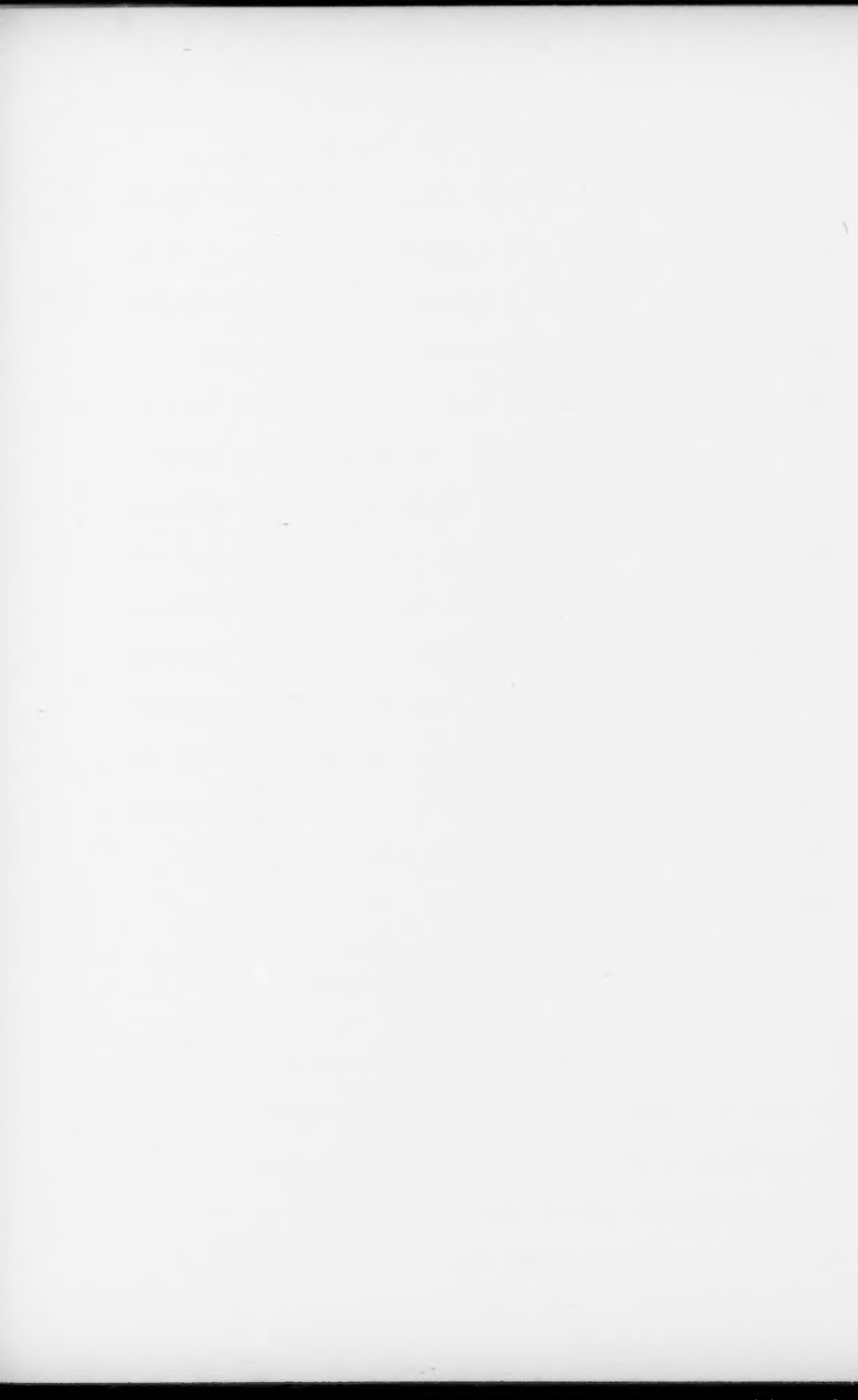
The opinion of the Supreme Court of Idaho which appears in the Appendix hereto, A-1, *infra*, is not reported at this time. The Order denying Appellant's Petition For Rehearing dated June 28, 1989 is not reported. It is reprinted in the Appendix hereto, A-2, *infra*.

The opinion of the Idaho Court of Appeals dated January 29, 1988, is not published but is reprinted in the Appendix hereto, A-3, *infra*.

The Memorandum Decision on appeal issued by the Honorable Alan M. Schwartzman, District Judge in and for the County of Ada, State of Idaho, on February 9, 1987 is not published but is reprinted in the Appendix hereto, A-4, *infra*.

JURISDICTIONAL STATEMENT

The Judgment of the Supreme Court of Idaho, on May 9, 1989, upheld the constitutionality of Idaho Code §18-1509 in the face of Appellant's constitutional challenge. The Petition For Rehearing was filed by the Appellant on May 30,



1989. The Idaho Supreme Court entertained and denied the Petition on June 29, 1989.

A Notice of Appeal to this Court was timely filed in the Supreme Court of Idaho on August 22, 1989.

This appeal is being docketed in this Court within sixty (60) days from the denial of rehearing below. Respondent, on August 28, 1986, mailed by means of the United States Postal Service forty copies of his Petition For Certiorari which were returned to Respondent on September 19, 1989. The requested changes were made herein and resubmitted.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2).

CONSTITUTIONAL PROVISIONS AND STATUTES

CONSTITUTION OF THE UNITED STATES, AMENDMENT 14

§1. [Citizenship - Due Process of Law - Equal Protection.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.



No state shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person or life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 18, CHAPTER 15, IDAHO CODE

18-1509. Enticing of children.--

(1) A person shall be guilty of a misdemeanor if that person attempts to persuade, or persuades, whether by words or actions or both, a minor child under the age of sixteen (16) years to either:

- (a) Leave the child's home or school; or
- (b) Enter a vehicle or building; or
- (c) Enter a structure or enclosed area, or alley, with the intent that the child shall be concealed from public view; while the person is acting without the authority of (i) custodial parent of the child, (ii) the state of Idaho or a political subdivi-



sion thereof or (iii) one having legal custody of the minor child. Nothing contained in this section shall be construed to prevent the lawful detention of a minor child or the rendering of aid or assistance to a minor child.

(2) Every person who is convicted of a violation of the provisions of this section shall be punished by imprisonment in the county or municipal jail for not more than six (6) months or by a fine of not more than one thousand dollars (\$1,000) or by both such fine or imprisonment. A person convicted a second or subsequent time of violating the provisions of this section shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for a period of time of not more than five years.

HOW THE FEDERAL QUESTION WAS RAISED

Throughout all the proceedings below, Mr. Sindak asserted that his statutory right to a speedy trial was violated and that Idaho Code,



§18-1509 was constitutionally vague. Mr. Sindak raised his objection to the constitutionality of Idaho Code §18-1509 at the time of trial. (Transcript, p. 4, ll. 3-23, p. 64, ll. 12-23.) On appeal to the District Court, the Court upheld the statute's constitutionality. The Idaho Court of Appeals reversed the District Court's ruling on the speedy trial grounds. The Idaho Supreme Court, on a Petition for Review, reversed the Idaho Court of Appeals on the speedy trial question and adopted the District Court's opinion on the issue of constitutionality of the code section. Mr. Sindak's Petition For Rehearing was denied.

STATEMENT

This case involves the question whether Idaho Code which prohibits by criminal punishment the enticement of children without an intent requirement is unconstitutional when applying the "void for vagueness" doctrine.

The instant suit arose when Mr. Sindak was originally charged on August 18, 1985, for



unlawfully attempting to get two minor children to come to his house close to midnight by knocking on a window of a home in which children were in and asking them to come out or over to his house to watch television and get paid for some yard work without the permission of their parents. On April 24, 1986, a trial was held on the State's Amended Complaint alleging that on August 18, 1985, Mr. Sindak attempted by words or actions, or both, to persuade one child, Jeremiah Bradshaw who was nine years old, to leave a travel trailer parked in the back yard of his home without permission of his parents. The State, on the day of trial, asked for and received permission to amend its Complaint.

SUBSTANTIAL QUESTION

The question as to the due process clause of the Fourteenth Amendment an accused's right is certainly not a novel issue for this Court, but it is a substantial one. This Court has had numerous opportunities to hear and refine



what protections are afforded an individual when he or she is accused of a crime. Kolendar vs. Lawson, 461 U.S. 352 (1983); Hoffman Estates vs. Flip Side, Hoffman Estates, Inc., 455 U.S. 489 (1982); Grayned vs. City of Rockford, 408 U.S. 104, 1972; Papachristou, et al. vs. City of Jacksonville, 405 U.S. 156 (1975).

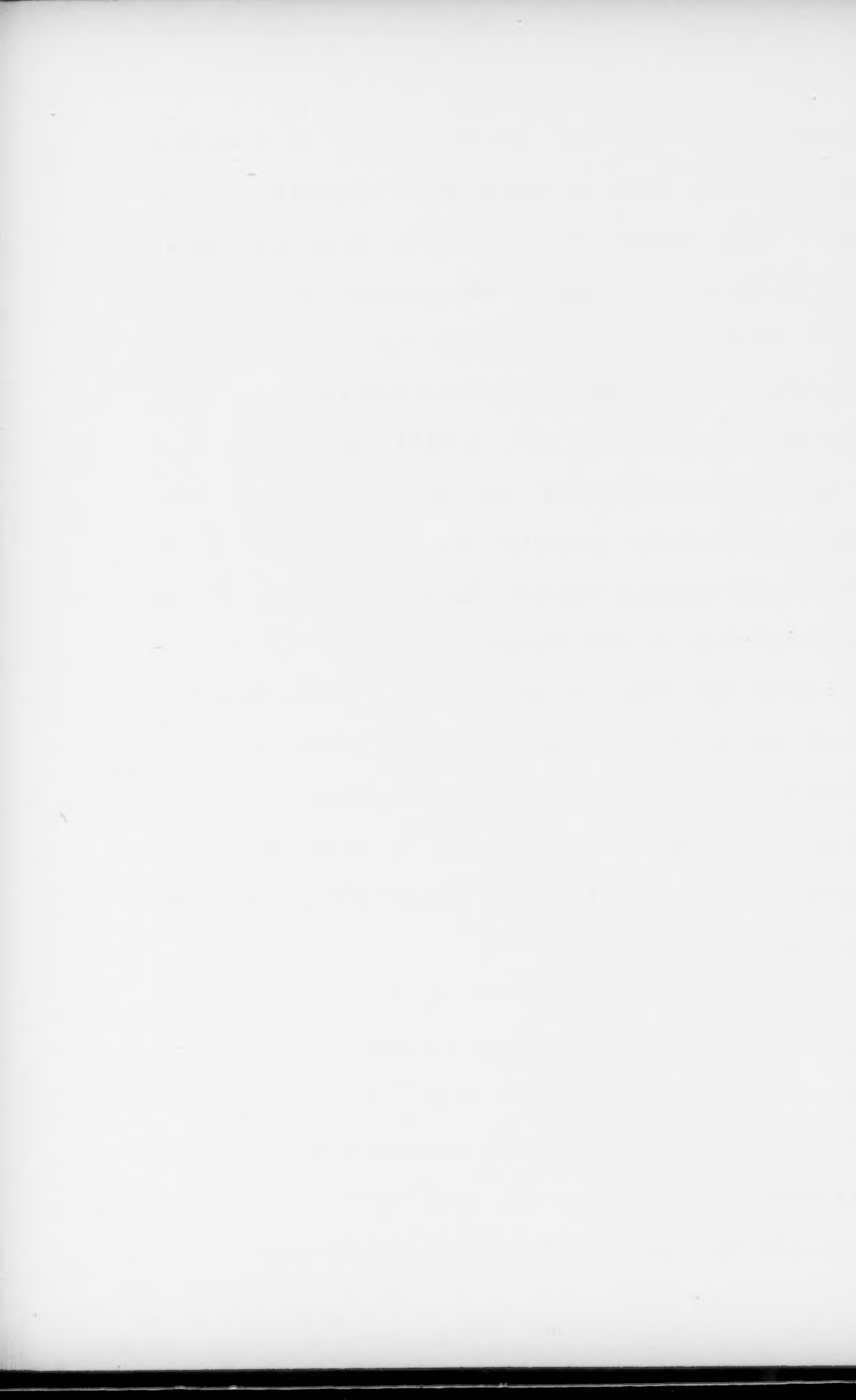
It has been held that a legislative enactment is constitutionally flawed when it fails to apprise the accused of the proscribed act, it encourages arbitrary and discriminatory enforcement and it makes criminal activities that are normally innocent. Kolendar vs. Lawson, supra; Hoffman Estates vs. Flip Side, Hoffman Estates, Inc., supra; Grayned vs. City of Rockford, supra; Papachristou, et al. vs. City of Jacksonville, supra.

The question becomes more substantial when the Court takes into consideration the characteristics of Idaho and its citizens. Idaho has approximately one million citizens who live in and travel over some 82,677 square miles. It is a friendly rural area with kind and outgoing



people. It is not uncommon for a complete stranger to come to the aid of another. It is even more common for people to stop and speak to children in their day-to-day activities. The issue this case brings to the Court is whether Idaho Code constitutionally makes such activity a crime. Mr. Sindak has challenged the constitutionality of this code section. He specifically asserts that the statute is constitutionally flawed because it fails to apprise him of the proscribed conduct and that it does not require the state to prove any intent to do a bad act. It is asserted that every free adult within the boundaries of the State of Idaho have and will on numerous occasions violate Idaho Code, §18-1509, if it is allowed to stand.

The State quite obviously has a compelling interest to protect the children of the state from those who wish to harm or injure them. It is assumed that the Idaho Legislature was attempting to build in some additional protection for our children when it enacted Idaho



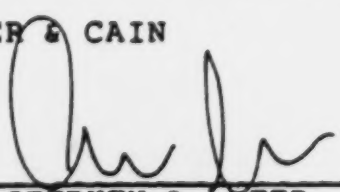
Code §18-1509, but the due process clause of the 14th Amendment also affords the accused certain rights. The State of Idaho, in prosecuting Mr. Sindak, was not required to prove or even present evidence as to his intent in order to get a guilty verdict. This flaw not only violated Mr. Sindak's constitutional rights but has further subjected each and every individual of this state to potential criminal punishment.

It is respectfully submitted that this case does raise a substantial question, not only for Mr. Sindak's personal due process rights, but also for those who will surely follow.

Based upon the above, it is respectfully requested that this Court grant certiorari.

BEER & CAIN

By



STEPHEN L. BEER
Attorney for
Petitioner



NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

EDWARD P. SINDAK, Petitioner

v.

STATE OF IDAHO, Respondent

ON PETITION FROM THE SUPREME COURT OF IDAHO

APPENDIX A TO
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

STEPHEN L. BEER
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IN THE SUPREME COURT OF THE STATE OF IDAHO

No. 17426

| | | |
|-----------------------|---|----------------------|
| STATE OF IDAHO, |) | |
| |) | Boise September 1988 |
| Plaintiff-Respondent, |) | Term |
| |) | |
| v. |) | Filed: May 9, 1989 |
| |) | |
| EDWARD P. SINDAK, |) | Frederick C. Lyon, |
| |) | Clerk |
| Defendant-Appellant. |) | |

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Honorable Alan M. Schwartzman, District Judge. Petition for Review of the opinion of the Court of Appeals was granted.

District court order affirming the judgment of conviction in the magistrate division, on charge of enticing a child. The Court of Appeals reversed the conviction. Reversed and remanded with instruction to the magistrate court that the judgment of conviction be reentered.

Beer & Cain, Boise, Idaho, attorney for appellant. Mitchell L. Egusquiza argued.

Honorable Jim Jones, Idaho Attorney



General, Boise, Idaho; David R. Minert, Deputy Attorney General. David R. Minert argued. SHEPARD, C.J.

This is an appeal from a judgment of conviction of the misdemeanor crime of enticing children, I.C. § 18-1509, entered following trial in the magistrate court. Following an appeal to the district court, the judgment and conviction were affirmed. An appeal was taken therefrom to the Court of Appeals, which reversed the judgment of conviction on the basis that the statutory right to a speedy trial had been violated. State v. Sindak, 113 Idaho 893, 749 P.2d 1018 (Ct.App. 1988). The State of Idaho brings this appeal from the decision of the Court of Appeals. We reverse and remand with instructions to the magistrate court that the judgment of conviction be reentered.

The sole question presented on this appeal are the implications and applicability to the present state of facts of I.C. § 19-3501(3). That statute provides in pertinent part:

The court, unless good cause to the contrary is shown, must order the prose-



cution or indictment to be dismissed, in the following cases:

. . . . 3. If a defendant, charged with a misdemeanor offense, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant enters plea of not guilty with the court.

Defendant Sindak was charged in the magistrate court of the misdemeanor crime of enticing children. During the ensuing six months, the Sindak case had been scheduled for trial on two separate occasions. Due to the overcrowding of the magistrate court calendar, both trial dates were vacated. The record contains no showing that Sindak objected to the said vacating of the trial dates. We note parenthetically that statistics and records indicate that the dockets of the magistrate courts in Ada County are overcrowded in the extreme. It is common for a magistrate to set for trial six to ten misdemeanor cases at the same time on the same day. This is done in the hopes that most of those cases set will be vacated through a guilty plea. Statistics reveal that approximately forty-four thousand misdemeanor and traffic



infraction cases are processed by the magistrate courts in the Fourth Judicial District of Idaho per year. "The Idaho Courts 1987 Annual Report Appendix," p.80.

In the instant case, Sindak's trial was commenced six months and twenty-four days after he had entered his plea of not guilty. Sindak moved from dismissal on the grounds that his statutory right to a speedy trial had been violated. I.C. § 19-3501(3). That motion was denied, the cause proceeded to trial, and the defendant was convicted as charged. An appeal was taken to the district court as aforesaid, and the conviction was affirmed.

Thereafter Sindak appealed to the Court of Appeals. There it was found that the trial delay was attributable to the court, and such delay and rescheduling had not been requested, caused or stipulated to by the defendant.

Likewise, there is no showing here that the delay and rescheduling was requested, caused or stipulated to by the prosecution. The Court of Appeals held that the delay in trial violated



the guarantees of the statute, and ordered the judgment of conviction vacated. From that decision the State brings this appeal asserting the applicability of the balancing test enunciated in Barker v. Wingo, 407 U.S. 514 (1972). The State argues that applying the Barker balancing test to the instant facts requires the validation and affirmation of the defendant's conviction in the instant case.

We note that Sindak did not assert, nor did the Court of Appeals base its decision upon, a constitutional right to a speedy trial, as guaranteed by the Sixth Amendment to the United States Constitution, nor any provision of the Idaho Constitution. Rather, the decision of the Court of Appeals was based solely upon an asserted violation of Sindak's statutory right under I.C. § 19-3501.

We hold that the Court of Appeals in the instant case erred in relying almost exclusively upon the decision in State v. Hobson, 99 Idaho 200, 579 P.2d 697 (1978). In Hobson, as in the instant case, the Court declined to



address the issue of the applicability of the Sixth Amendment of the United States Constitution guaranteeing the right to a speedy trial. The Court in Hobson rather, focused solely upon the Idaho statute which is a predecessor of the statute at issue in the instant case. The statute considered in Hobson required a defendant to be tried during the next term of court after the information is filed. The opinion in Hobson emphasized the need for such trial during during the next term of court unless good cause to the contrary is shown. The Court noted that the State "has not shown any justification for failure to prosecute appellant during the two intervening terms of court . . . as is required by I.C. § 19-3501." Thereafter, in State v. Talmage, 104 Idaho 249, 658 P.2d 920 (1983) and the case of State v. Campbell, 104 Idaho 705, 662 P.2d 1149 (Ct.App. 1983), the courts considered the same necessity for trial at the following term of court as required by the statute. The facts in both Talmage and Campbell differ somewhat from the instant case



in that defendant. Nevertheless, the Court of Appeals stated in Campbell:

Prejudice is a central factor in analyzing the right to speedy trial. (Citation omitted). Where a defendant fails to make a showing of reasonable possibility of prejudice, this factor should be given very little weight, if any, for the defendant. Here there is no contention that Campbell's ability to present his defense was impeded by the delay. He has not alleged or shown that he was prejudiced by the delay in any way. We can ascribe no weight to the factor of prejudice in this case.

Campbell, 104 Idaho at 711. The decision of this Court in State v. Carter, 103 Idaho 917, 655 P.2d 434 (1982), was likewise based upon the then statute requiring trial of criminal cases at "the next term of court in which the indictment is triable." In Carter this Court held that "the 'balancing test' laid down in Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 23 L.Ed.2d 101 (1972), for interpreting the federal guarantee of speedy trial, is consistent with the protection afforded by our own state constitution and statutes." 103 Idaho at



921. (Emphasis added). The Court in Carter then proceeded to consider the factors of the Barker balancing test and rejected the claim of violation to a speedy trial after a delay of fourteen months.

The Court of Appeals in the instant case focused almost exclusively upon the decision of this Court in Hobson, and made only passing reference to the decision of this Court in State v. Russell, 108 Idaho 58, 696 P.2d 909 (1985). In so doing the Court of Appeals erred. In Russell we stated: "We further note that in the instant case, as distinguished from Hobson that it was not the prosecution who delayed the trial of the defendant; rather, the trial court upon its own motion vacated a trial setting because of congested and overloaded criminal trial docket." The Court further stated: "Here, the vacation of the trial setting for April 4, 1983, cannot be charged to the prosecution. Neither can it be charged to the defendant. Rather, it is neutral." 108 Idaho at 61.

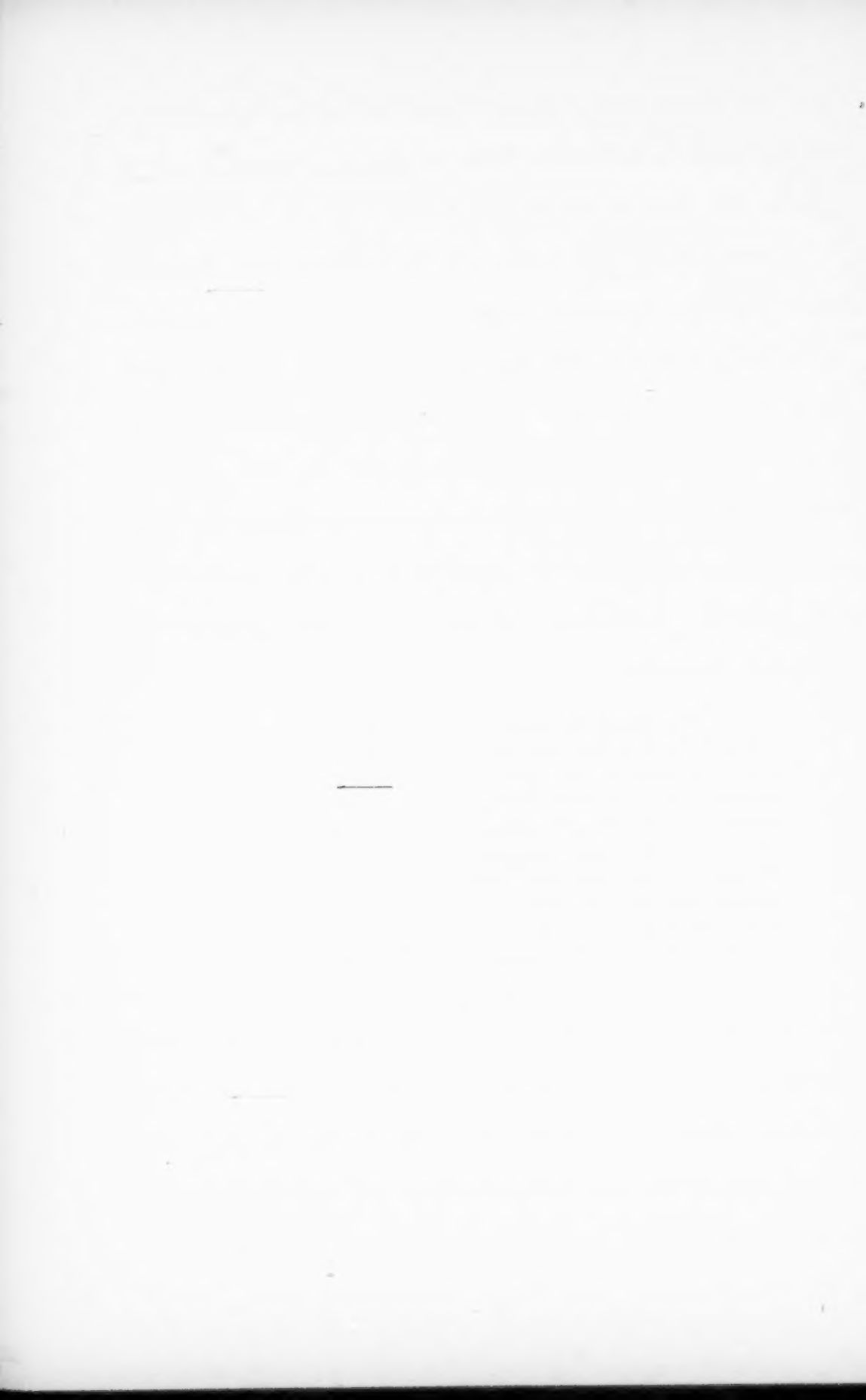


We deem the instant case to be substantially indistinguishable from State v. Russell, 108 Idaho 58, 696 P.2d 909 (1985).

The delay of time in bringing the defendant in the instant case to trial was twenty-four days beyond the six-month period prescribed in I.C. § 19-3501(3). That delay was not attributable to either the State or the defendant. The delay was solely attributed to the overly burdened trial calendar of the courts in the Fourth Judicial District. The Court of Appeals stated:

We cannot agree with this conclusion although we are aware of the burdens of the trial court in managing an overflowing docket. Such management problems alone, however do not equal good cause for delay. We remind the court of the importance of the right at issue and the necessity of limiting justification for an abrogation of that right.

The decision of the Court of Appeals further indicated that the record "is devoid of any showing that an effort to avoid the delay was made--e.g., by the possibility of assigning the case to another local judge or by bringing in



additional magistrates from elsewhere in the district to hear cases on a crowded local docket." We note the lack of any statutory or constitutional authority in the Court of Appeals to supervise the trial courts of this state.

Before the Court of Appeals the defendant-appellant raised issues in addition to that of speedy trial. Since the Court of Appeals found that Sindak's right to speedy trial had been violated, such issue was deemed dispositive, and the Court of Appeals did rule on the remaining issues raised by Sindak. Since this Court today reverses the Court of Appeals on the speedy trial issue, we also briefly address those issues raised in the Court of Appeals, but not discussed in its opinion. Those issues were discussed and ruled upon in the well-reasoned opinion of the district court. We affirm the decision of the district court on those remaining issues and consider that only a summary review is necessary.

1

Sindak argues that I.C. § 18-1501(1) is void for vagueness in that the statute provides



no notice as to the conduct that is forbidden. Hence, Sindak appears to be challenging the statute on the basis of overbreadth and vagueness. As noted in the decision of the district court, the statute is not overly broad. While the statute forbids one to persuade or attempt to persuade a minor child under sixteen to leave its home or school, or to enter buildings, etc., with the intent to conceal the child from public view, nevertheless the proscribed acts must be done without proper authority. As discussed in the opinion of the district court, permission or authority to do the proscribed acts may be express or implied, and the burden to show otherwise is placed on the State. The district court stated in its opinion:

In determining the sufficiency of a statute, the words of the questioned statute should not be evaluated in the abstract but should be considered with reference to the particular conduct of defendant. State v. Lenz, 103 Idaho 632, 634, 651 P.2d 566 (Ct.App. 1982). In the context and circumstances of this case, the statute gave Sindak sufficient notice that attempting to persuade Jeremiah Bradshaw to leave his home without parental



authority would subject him to the penalty of the law.

1 18-1509. Enticing of children.-(1)

A person shall be guilty of a misdemeanor if that person attempts to persuade, or persuades, whether by words or actions or both, a minor child under the age of sixteen (16) years to either:

(a) Leave the child's home or school;
or

(b) Enter a vehicle or building; or

(c) Enter a structure or enclosed area, or alley, with the intent that the child shall be concealed from public view; while the person is acting without the authority of (i) the custodial parent of the child, (ii) the state of Idaho or a political subdivision thereof or (iii) one having legal custody of the minor child.

Nothing contained in this section shall be construed to prevent the lawful detention of a minor child or the rendering of aid or assistance to a minor child.

We agree, and affirm the district court in its holding that the statute in question is not void for vagueness, nor overbroad as intruding upon constitutionally protected conduct.

It was asserted before the district court and the Court of Appeals that the provisions of I.C. § 18-1509(1) should be narrowly construed



to the fixed residence of a family. In the instant case it is charged that Sindak attempted to lure the child in question from a travel trailer parked next to the family home. Hence, it is argued by Sindak that a travel trailer is not a home within the context of the statute. At trial the magistrate court ruled, and the district court affirmed on appeal, that the term "home" and "dwelling" are synonymous in meaning. We agree. In the instant case a travel trailer in which the child was spending the night was in the yard of the family residence, approximately ten to twelve feet from the parents' bedroom window. Historically the word "home" has been defined to include the main dwelling and its curtilage, under Fourth Amendment analyses. See W. LaFave & J. Israel, Criminal Procedure, § 3.2(c) (1985). Curtilage is commonly defined as the enclosed space of ground and buildings immediately surrounding a dwelling house. Black's Law Dictionary (5th ed. 1969). We find no error in the decision of the magistrate court and the district court.



Sindak also argues that the prosecution failed to prove the crime was committed in Ada County. We disagree. The parents of the child testified that the family residence was on a particular street within the limits of the City of Boise, and that the incident in question occurred at that address. We find no error.

We reverse the decision of the Court of Appeals and reinstate the decisions of the magistrate and district courts. The cause remanded to the magistrate division of the district court for enforcement of the judgment. No costs allowed.

BAKES and JOHNSON, JJ. concur. McFADDEN, J. (Pro Tem.) dissenting.

Idaho law imposes a high duty upon the State to see that a person is afforded all of his rights in a criminal action, including his right to a speedy trial. In interpreting I.C. § 19-3501, this Court has held that the State holds primary responsibility for bringing a case to trial. State v. Hobson, 99 Idaho 200, 579 P.2d 697 (1978). It is also the responsi-

bility of the State to enforce a defendant's right to a speedy trial. A defendant has no duty to demand a speedy trial at the expense of waiving that right. Barker v. Wingo, 407 U.S. 514 (1972).

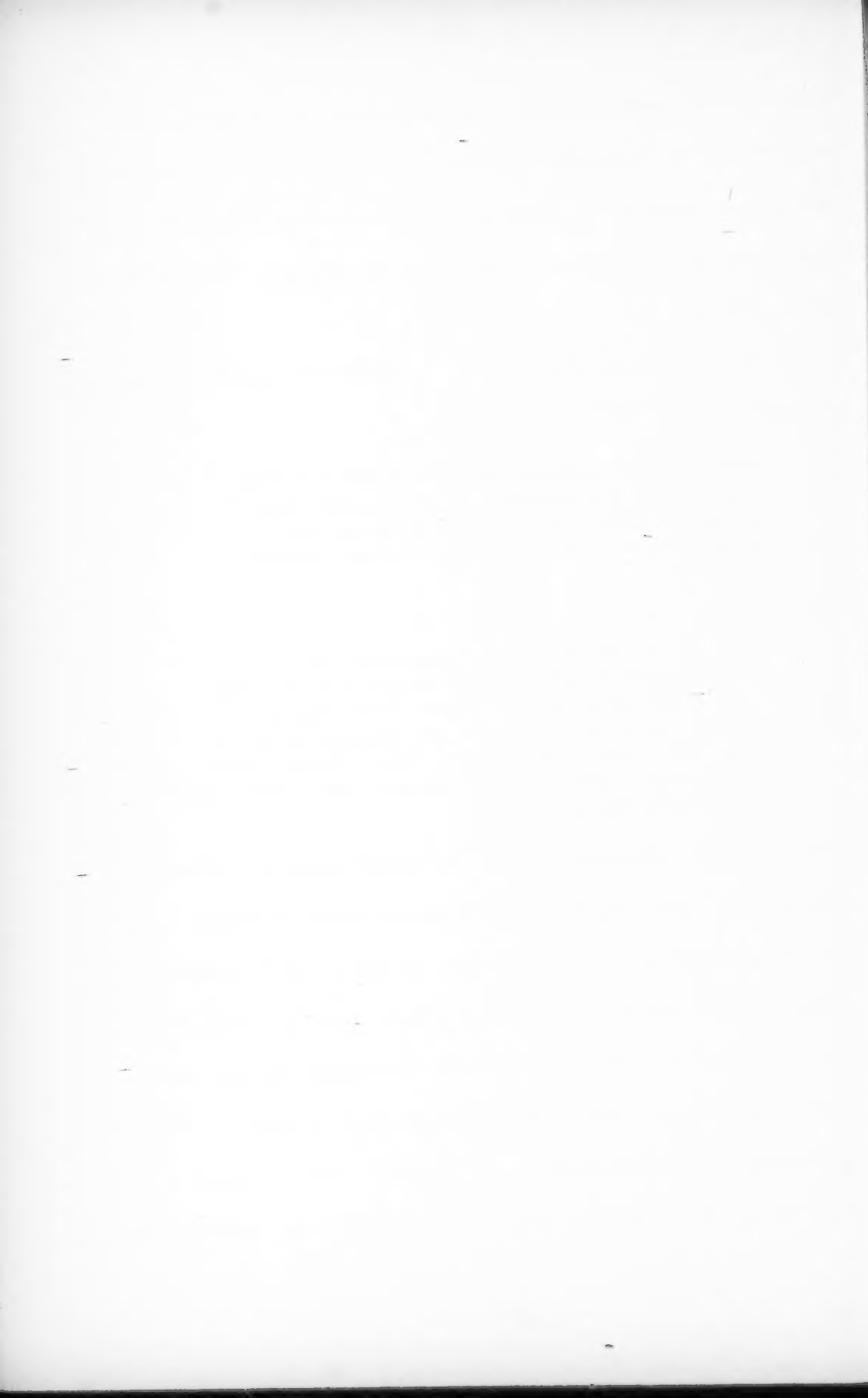
I.C. § 19-3501, in pertinent part, provides:

The court unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases:

. . . .

(3) if a defendant, charged with a misdemeanor offense, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant enters a plea of not guilty with the court.

Sindak was charged with a misdemeanor offense only, and the record indicates that Sindak was tried April 24, 1986, six months and twenty-three days after he entered his not guilty plea on October 1, 1985. Sindak's first trial date had been set for November 21, 1985. This setting was vacated and reset for trial on February 6, 1986. When the parties appeared



for trial, once again the trial was vacated and again reset. There is no showing in the record that the delay was attributable to any action or waiver by the defendant. Accordingly, the defendant established a prima facie showing that his statutory right to a speedy trial under I.C. § 19-3501(3) has been denied. Thus, the burden to show "good cause" for the delay is upon the State. State v. Hobson, 99 Idaho at 202; State v. Stuart, 113 Idaho 494, 745 P.2d 1115 (Ct.App. 1987); State v. Gabrielson, 109 Idaho 507, 708 P.2d 912 (Ct.App. 1985).

In the opinion of the majority, the delay in this case was attributable to a crowded court calendar, and as such, is justification for the lack of speedy trial. In my opinion, the mere fact that other cases of undetermined age demanded priority consideration of the magistrate, does not excuse the delay, absent a showing of total inability to bring the case to trial within the requisite time before another judge or magistrate, or that all the other cases then before the magistrate were of higher



priority than defendant Sindak's. At the time of trial there were ten magistrates assigned to Ada County, and fourteen assigned to the Fourth Judicial District of Idaho.

I.R.Cr.P. 50 allows "[a]ny hearings or proceedings [to] be continued at a time and place certain by order of the court upon motion of any party, upon stipulation of the parties, or upon motion of the court." (Emphasis added). A motion on the part of the prosecution or the court necessitates notice to the defendant, and an opportunity to be heard. There is nothing in the record of this case to indicate compliance with this rule by either the prosecution or the court.

The courts, as an arm of the State, are obligated to comply with this statute as is any other party. Consequently, the Court cannot now exploit their own inaction in excusing non-compliance with I.C. § 19-3501.

In my opinion, the provisions of 19-3501(3) require dismissal of the misdemeanor offense charged against the defendant Sindak, which



dismissal would be a ban to any further prosecution. I.C. § 19-3506. HUNTLEY, J., dissenting.

I concur in the cogent and concise analysis of Justice McFadden. I respectfully take strong issue with the analysis of the majority.

Idaho Code § 19-3501 provides that the Court must order the prosecution be dismissed "if the trial has not been postponed upon his [the defendant's] application." No where does the statute provide that there is an exception if the courts are at fault in the management of their calendars. Not only do we have adequate magistrates in this state to handle these matters, Idaho's thirty-three district judges are available to sit on these cases in an emergency. The very purpose of the statute is to require that the agencies of government, including both the prosecutor and the courts, provide a defendant a speedy trial.

The suggestion in the majority opinion that the court is a "neutral" party is unsupported either in case Law or of logic. The caption of the case is the State of Idaho v.



Sindak. The courts, for the purpose of managing their calendars, are part of the state and not part of the defense. The majority opinion totally eviscerates the statute and destroys the policy of both the legislature and what should be the policy of the Supreme Court, that misdemeanor defendants receive a speedy trial.

In this case there was a lack of speedy trial due solely to one reason, and that is, faulty calendar management, which I say in an uncritical way in that our courts regularly process thousands of cases each year and do so in a timely manner. One of the major reasons they are processed in a timely manner is that they are required to be processed in a timely manner. It is regrettable that we would destroy that laudable public policy of both the legislature and the courts in order to affirm the conviction of one defendant in one case.



Letter from The Supreme Court of the State of
Idaho addressed to Mr. Brian L. Johnson:

May 10, 1989

Mr. Brian L. Johnson
Assistant Managing Editor
West Publishing Company
P.O. Box 64526
St. Paul, MN 55164-0526

RE: STATE v. SINDAK
1989 Slip Opinion No. 68
Filed: 5/9/89
Idaho Supreme Court Nos. 17426

Dear Mr. Johnson:

The attached special concurrence written
by Justice Byron J. Johnson was inadvertently
omitted from the above-captioned opinion. When
you print your advanced sheets, would you please
see that this is inserted on page 7 of the slip
opinion, directly after the majority opinion.

Thank you for your attention to this mat-
ter.

Sincerely,

BYRON J. JOHNSON
Justice

ATTACHMENT

cc: Justices
Judge Alan Schwartzman
Counsel



STATE v. SINDAK
Supreme Court No. 16869

JOHNSON, J., specially concurring.

While I concur with the majority opinion, I am concerned that it does not sufficiently harmonize State v. Hobson, 99 Idaho 200, 579 P.2d 697 (1978) and State v. Russell, 108 Idaho 58, 696 P.2d 909 (1985). The decision of District Judge Alan M. Schwartzman, the trial judge in this case, presents a succinct reconciliation of these two cases that is satisfying to me. Judge Schwartzman said:

Idaho Code section 19-3501(3) (Supp. 1986) prescribes a six month period in which a criminal defendant must be brought to trial following a plea of not guilty to a misdemeanor offense. If his trial is not held within that time frame and the delay is not due to the defendant's application, the prosecution or indictment must be dismissed. Sindak entered a not guilty plea on October 1, 1985, and his trial was finally held, following two postponements, on April 24, 1986. Neither of the postponements were due to Sindak's application. Since the delay between the entry of the not guilty plea and the trial was six months and 24 days, Sindak has established a prima facie case under section 19-3501(3).

When a criminal defendant has established a prima facie case under section 19-3501, the burden shifts to the state to show that "good cause" existed for the delay. State v. Hobson, 99 Idaho 200, 202, 579 P.2d 697 (1978). In order to determine whether good cause has been shown, the factors set out by the United States Supreme Court in Baker v. Wingo, 407 U.S. 514 (1972), are to be weighed by the court. State v. Russell, 108 Idaho 58, 62, 696 P.2d 909 (1985). These factors are: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. Barker, 407 U.S. at 530.

Perhaps this formulation will be helpful to others, as it has been to me, in harmonizing Hobson and Russell.



IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|---------------|
| STATE OF IDAHO |) | |
| |) | ORDER DENYING |
| Plaintiff-Respondent, |) | PETITION FOR |
| |) | REHEARING |
| v. |) | |
| |) | No. 17426 |
| EDWARD P. SINDAK, |) | |
| |) | Ref. No. |
| Defendant-Appellant. |) | 89RH-30 |

The Appellant having filed a Petition for Rehearing on May 30, 1989 and a supporting Brief on June 13, 1989, of the Court's Opinion released May 9, 1989; therefore, after due consideration,

IT IS HEREBY ORDERED that Appellant's Petition for Rehearing be, and hereby is, DENIED.

DATED this 29th day of June, 1989.

By Order of the Supreme Court

Frederick C. Lyon, Clerk

cc: Counsel of Record
District Court Clerk
District Judge Schwartzman

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

No. 16869

| | | |
|-----------------------|---|--------------|
| STATE OF IDAHO |) | |
| |) | |
| Plaintiff-Respondent, |) | 1988 Opinion |
| |) | No. CA-6 |
| v. |) | |
| |) | Filed: |
| EDWARD P. SINDAK, |) | January 29, |
| |) | 1988 |
| Defendant-Appellant. |) | Frederick C. |
| |) | Lyon, Clerk |

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Honorable Alan M. Schwartzman, District Judge; Honorable Richard Schmidt, Magistrate. District court order affirming the judgment of conviction in the magistrate division, on charge of enticing a child, reversed.

Judgment vacated. Mitchell Egusquiza of Beer & Cain of Boise for appellant. Jim Jones, Attorney General; David R. Minert, Deputy Attorney General; for respondent.



PER CURIAM.

Edward Sindak was found guilty of violating I.C. § 18-1509, enticing of children, by a magistrate division jury, a first offense punishable as a misdemeanor. On appeal to the district court, the judgment was affirmed. Sindak appeals from that decision. Although Sindak raises several grounds for reversal of his conviction, we conclude that one issue -- the failure of the magistrate to hold Sindak's trial within the time period required by statute -- is dispositive. We vacate the judgment of conviction.

Sindak was charged with the crime of enticing children when he attempted to persuade a minor child to leave a trailer parked in the backyard of the child's home without the permission of the child's parents. A complaint against Sindak was issued on September 13, 1985. Sindak pled not guilty on October 1. A trial date was originally set for November 21. This date was vacated and reset for February 6, 1986. When the parties appeared for trial,

once again the trial was vacated and reset for a later date, April 24, 1986. On April 11, Sindak moved to dismiss the case for failure of the state to try him within the six month time limit prescribed by I.C. § 19-3501(3). The court denied his motion and trial was held. The magistrate's ruling was upheld on appeal to the district court.

Idaho Code § 19-3501(3) states in pertinent part:

The court, unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases:

. . . .

3. If a defendant, charged with a misdemeanor offense, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant enters a plea of not guilty with the court.

Under the terms of the statute an action must be dismissed if prosecution is in violation of the time requirements and there exists no "good cause" for the delay. State v. Dillard, 110 Idaho 834, 718 P.2d 1272 (Ct.App. 1986). If



cause, we should consider the balancing test prescribed by Barker v. Wingo, 407 U.S. 514 (1972). The factors of this test are: the length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. We decline to apply these factors to this case.

The Barker analysis was adopted to determine good cause under a violation of the constitutional right to a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution. Sindak has not alleged a violation under the constitutional right to a speedy trial, but instead a violation of the statutory right under I.C. § 19-3501. As determined in Hobson, supra, at 201, 579 P.2d at 698, the statutory right to a speedy trial is not identical to the right under the United States Constitution. See State v. Lindsay, 96 Idaho 474, 531 P.2d 236 (1975). The statutory right to a speedy trial supplements and gives additional rigor to the constitutional right.



In Hobson, the Court held that the application of the Barker analysis ignored the separate legislative supplementation of I.C. § 19-3501. We agree. The statute has a plain meaning that cannot be disregarded. It provides that a prosecution "must" be dismissed if trial is delayed beyond six months without good cause. Based on the distinction drawn in Hobson, our analysis in this case does not require an application of the Barker factors. Hobson is still good law. It was distinguished, but not overruled, in State v. Russell, 108 Idaho 58, 696 P.2d 909 (1985). See also State v. Fairchild, 108 Idaho 225, 697 P.2d 1239 (Ct.App. 1985).

The delay here was based upon setting Sindak's case over in order to accommodate more pressing cases. The court's docket sheet denotes Sindak's case as "not [a] priority case." These records also indicate that Sindak was ready for trial at each of the first two trial dates.

In denying Sindak's motion for dismissal, the trial court reviewed its own actions in causing the delay and determined that good cause existed. We cannot agree with this conclusion although we are aware of the burdens of the trial court in managing an overflowing docket. Such management problems alone, however, do not equal good cause for delay. We remind the court of the importance of the right at issue and the necessity of limiting justification for an abrogation of that right. We repeat our language from Stuart:

The six-month time limitation for speedy trial under I.C. § 19-3501 does not represent a whimsical time frame. . . . Trial courts must be diligent in securing compliance with time restraints. It is the court's duty to arrange for trial, and more failure to do so is not good cause for delay.

Stuart, supra, at _____, 745 P.2d at 1117. The administrative convenience in rescheduling Sindak's case one time can be understood by this Court. This, however, will not excuse or justify the second change of trial dates which delayed the case beyond the statutory limitation.



The record is devoid of any showing that an effort to avoid the delay was made -- e.g., by the possibility of assigning the case to another local judge or by bringing in additional magistrates from elsewhere in the district to hear cases on a crowded local docket.

We conclude that the trial court erred in failing to grant Sindak's motion to dismiss. Because the district court upheld the magistrate's ruling, we reverse the district court's determination and we vacate the judgment of conviction.

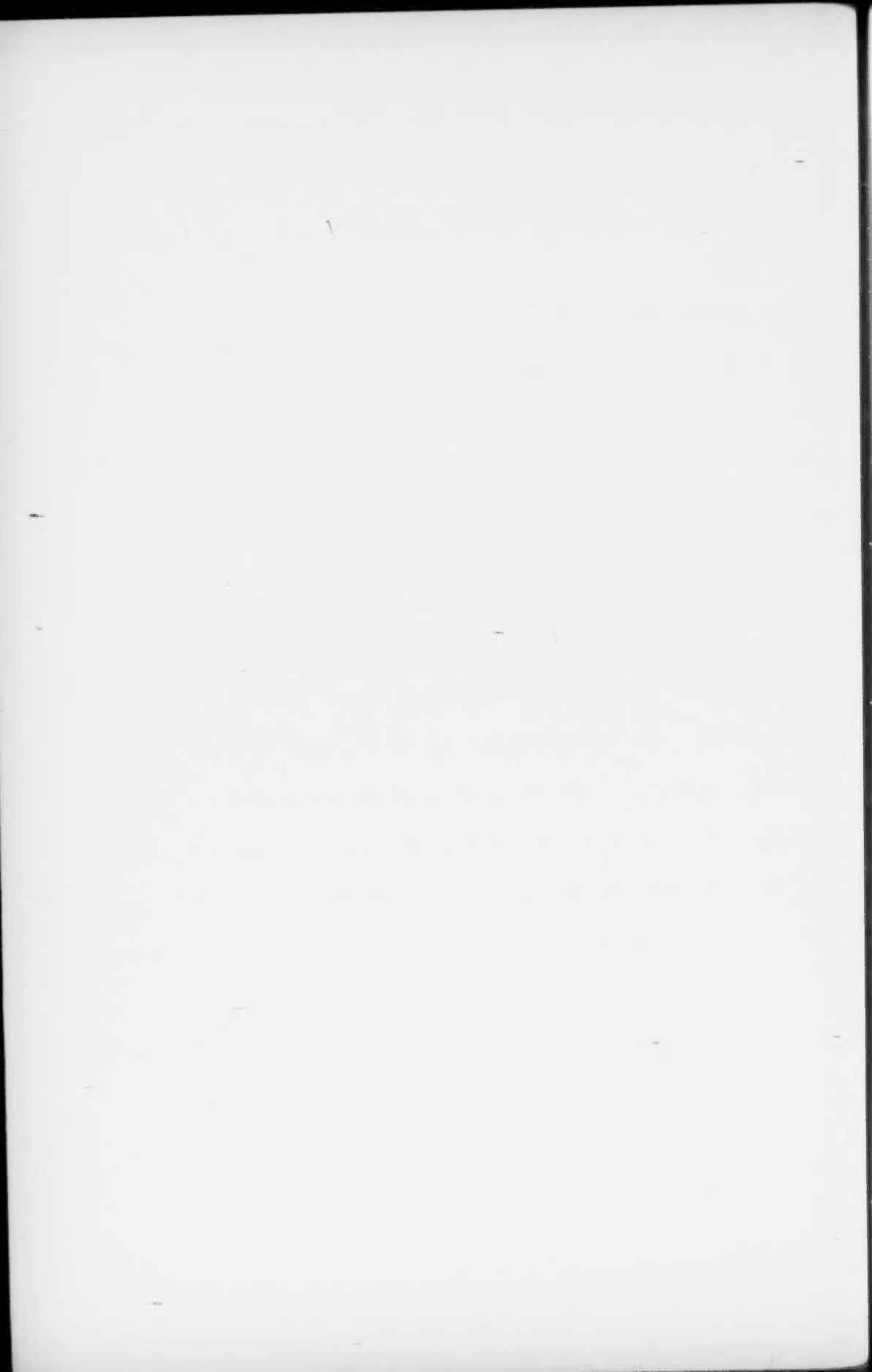


IN THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR
THE COUNTY OF ADA

| | | |
|-----------------------|---|----------------|
| THE STATE OF IDAHO, |) | |
| Plaintiff/Respondent, |) | CASE NO. 13652 |
| |) | |
| vs. |) | MEMORANDUM |
| |) | DECISION |
| EDWARD P. SINDAK, |) | ON APPEAL |
| |) | |
| Defendant/Appellant. |) | |

This case comes before the Court on defendant, Edward P. Sindak's, appeal from his conviction by a Magistrate Division jury on April 24, 1986, of violating Idaho Code § 18-1509 (Supp. 1986). Section 18-1509 proscribes the crime of enticing of children and is punishable in the first offense as a misdemeanor. Jurisdiction of this court is provided by Idaho Code § 1-2213 (1979).

The original complaint against Sindak was issued on September 13, 1985, charging him with attempting to persuade two minor children to leave their home and enter his house without



their parent's permission on or about midnight of August 18, 1985. The amended complaint, filed April 24, 1986, reads as follows:

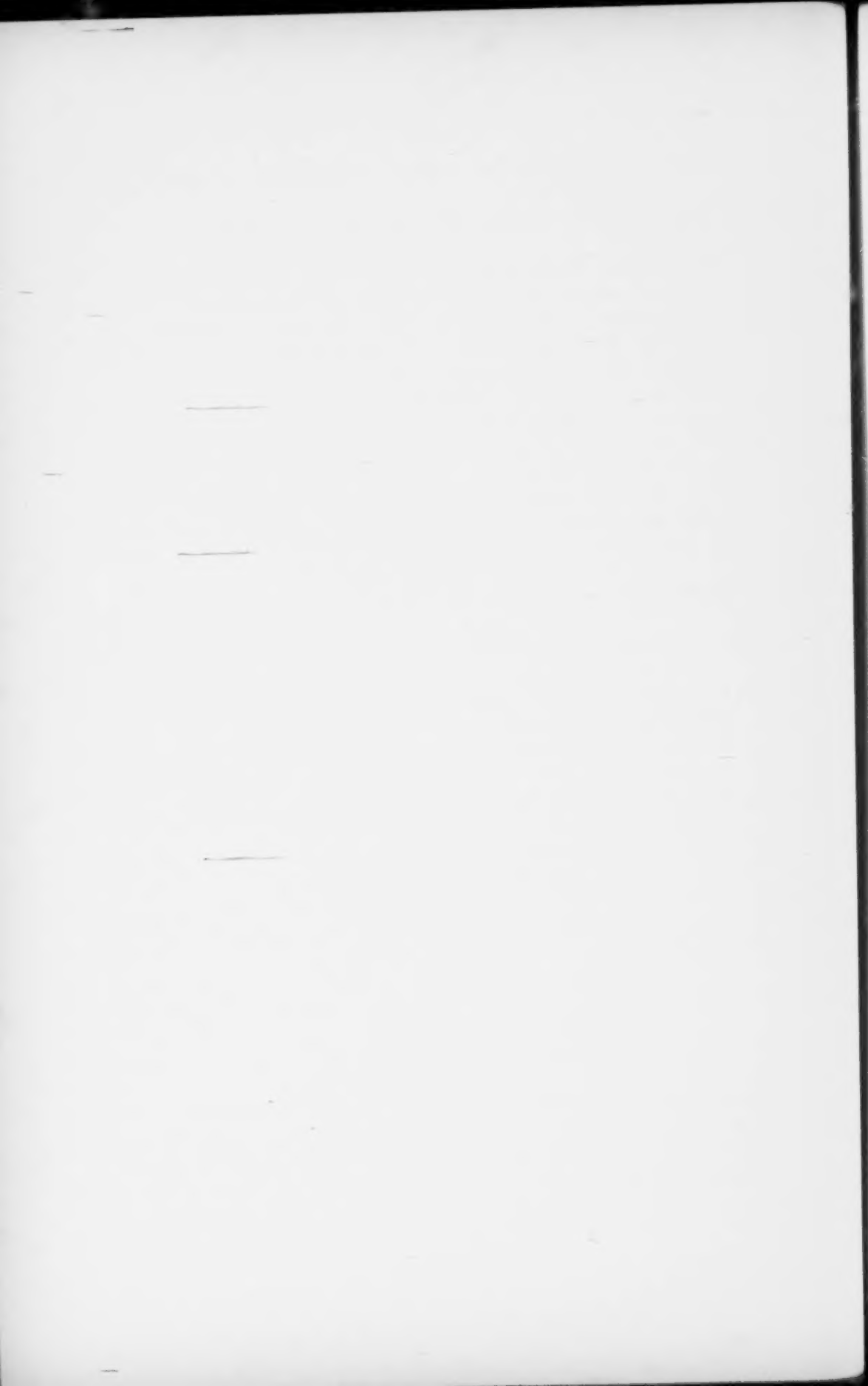
That the Defendant, EDWARD P. SINDAK, on or about the 18th day of August, 1985, in the City of Boise, State of Idaho, did attempt to persuade by words or actions or both, a minor child, to wit: JEREMIAH BRADSHAW, under the age of sixteen (16) years, to wit: 9 years old, to leave a trailer parked in the backyard of his home, without the permission of his parents. Violation of Idaho Code § 18-1509.

This behavior was alleged to be in violation of section 18-1509 which reads:

(1) A person shall be guilty of a misdemeanor if that person attempts to persuade, or persuades, whether by words or by actions or both, a minor child under the age of sixteen (16) years to either:

- (a) Leave the child's home or school; or
- (b) Enter a vehicle or building; or
- (c) Enter a structure or enclosed area, or alley, with the intent that the child shall be concealed from public view;

while the person is acting without the authority of (i) the custodial parent of the child, (ii) the State of Idaho or a political subdivision thereof or (iii)



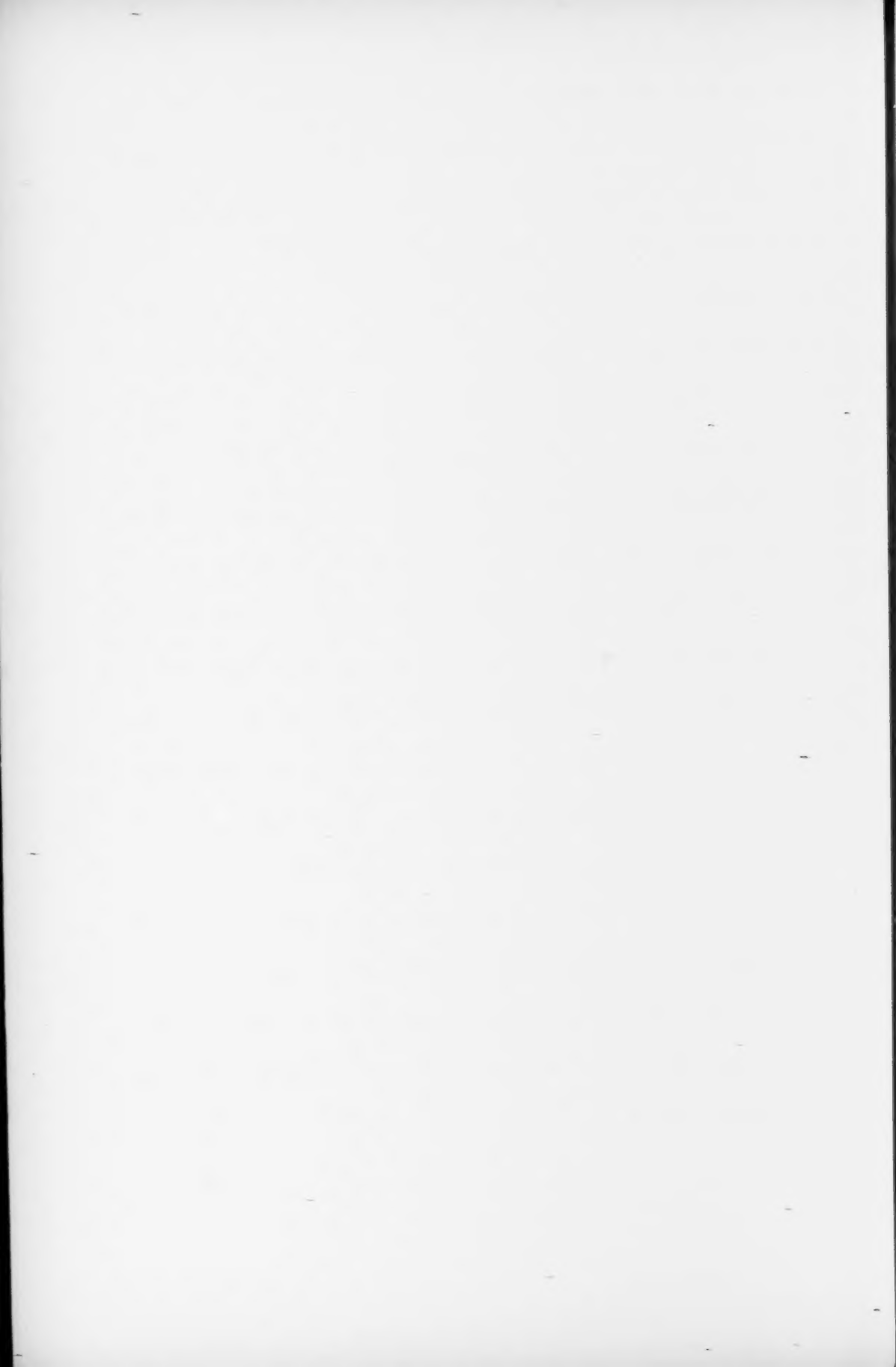
one having legal custody of the minor child. Nothing contained in this section shall be construed to prevent the lawful detention of a minor child or the rendering of aid or assistance to a minor child. (2) Every person who is convicted of a violation of the provisions of this section shall be punished by imprisonment in the county or municipal jail for not more than six (6) months or by a fine of not more than one thousand dollars (\$1,000) or by both such fine and imprisonment. A person convicted a second or subsequent time of violating the provisions of this section shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for a period of time of not more than five (5) years.

Sindak entered a plea of not guilty on October 1, 1985, and a jury trial was scheduled to commence on November 21, 1985. However, on the original date of trial, the case was "bumped" or continued at the behest of the trial court and reset to February 6, 1986. The February 6th trial date in turn was vacated by the court due to a scheduling conflict with yet another case with higher priority. Trial was rescheduled for April 24, 1986. Prior to trial (April 11) Sindak moved to dismiss the action against him for failure of the State to try him



within the six-month time frame established by Idaho Code Section 19-3501(3). This motion was denied in a hearing held on April 22, 1986. Thereafter, Sindak was tried on April 24, 1986, as scheduled, and convicted by a jury of the charged offense. Notice of appeal was filed on May 5, 1986.

On this appeal, Sindak raises five issues: (1) whether the state failed to prosecute him within the time frame of Idaho's speedy trial act; (2) whether the enticement of child statute fails to state a crime due to the lack of a specified intent; (3) whether the child enticement statute is void for vagueness; (4) whether the trailer in which Jeremiah Bradshaw was in at the time of the enticement could be considered a "home" within the meaning of the child enticement statute; and (5) whether the prosecution established at trial that the crime occurred in Ada County, Idaho. These issues will be addressed in turn.



SPEEDY TRIAL

Idaho Code § 19-3501(3) (Supp. 1986) prescribes a six-month period in which a criminal defendant must be brought to trial following a plea of not guilty to a misdemeanor offense. If his trial is not held within that time frame and the delay is not due to the defendant's application, the prosecution or indictment must be dismissed. Sindak entered a not guilty plea on October 1, 1985, and his trial was finally held, following two postponements, on April 24, 1986. Neither of the postponements were due to Sindak's application. Since the delay between the entry of the not guilty plea and the trial was six months and 24 days, Sindak has established a prima facie case under section 19-3501(3).

When a criminal defendant has established a prima facie case under section 19-3501, the burden shifts to the State to show that "good cause" existed for the delay. State v. Hobson, 99 Idaho 200, 202, 579 P.2d 697 (1978). In order to determine whether good cause has been



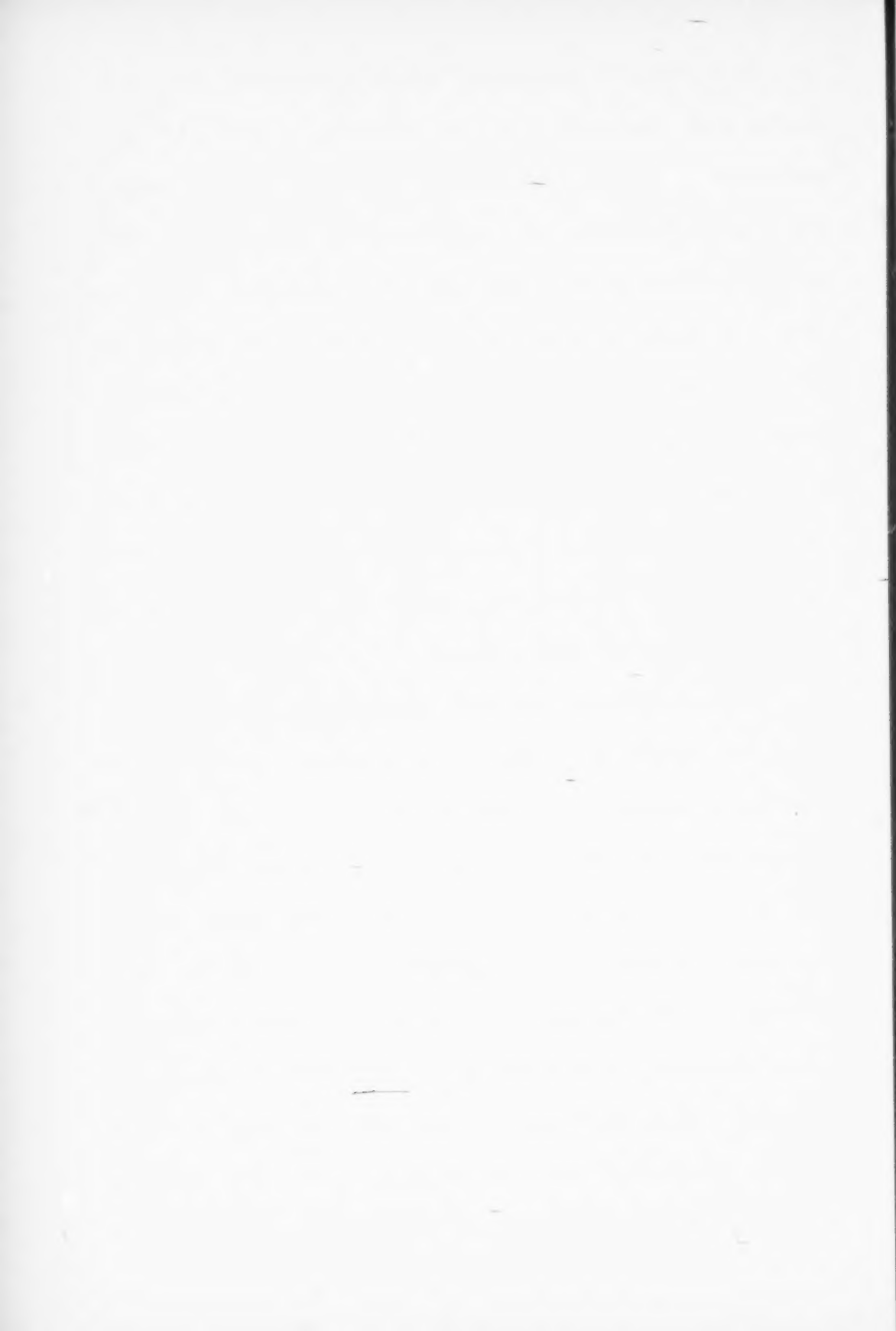
shown, the factors set out by the United States Supreme Court in Barker v. Wingo, 407 U.S. 514 (1972), are to be weighed by the court. State v. Russell, 108 Idaho 58, 62, 696 P.2d 909 (1985). These factors are: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. Barker, 407 U.S. at 530.

The length of the delay in this case is minimal, being only 24 days. As for the reasons for the delay, at least two and one-half months were attributable to the trial court in managing its crowded docket. Delays attributable to the court in managing its docket are neutral and cannot be charged to the State. Russell, 108 Idaho at 61. There is no indication in the record that Sindak objected to the double rescheduling of his trial, although he objected to the six-month delay almost immediately after that time had elapsed. As for prejudice, three interests have been identified as potentially being imperiled by the lack of a speedy trial:



(1) oppressive pretrial incarceration; (2) anxiety and concern of the accused; and (3) impairment of the defense. Id. at 62. Here, Sindak complains of attorney's fees and the unavailability of one of the alleged victims who was also a potential witness. An increase of attorney fees is not one of the interests that has been recognized as creating prejudice for speedy trial purposes. As for the lack of one of the alleged victims who was also a material witness, Sindak has made no actual showing of prejudice in the record.

After balancing the Barker v. Wingo factors in order to determine whether good cause has been shown for the delay in excess of six months before Sindak was tried after pleading not guilty, this court holds that good cause has been shown. The length of the delay was minimal; the reason for the delay was a crowded court docket, chargeable to the court which is neutral; the defendant did not object to the double rescheduling of trial; and no actual showing of prejudice has been made. The City



of Boise was not in violation of 19-3501(3) in failing to try Sindak within six months of his not guilty plea. See and compare State v. Drake, Memorandum Opinion and Order of Judge Gerald Schroeder, Fourth District Court Case No. 13683, dated October 6, 1986.

INTENT

Sindak next argues that section 18-1509(1) fails to state a crime in that no intent element is provided for in that statute. Under Idaho Code § 180-14 (1979), "[i]n every crime or public offense there must exist a union, or joint operation, of act and intent, or criminal negligence." However, "intent" as used in section 18-114 means "not an intent to commit a crime but is merely the intent to knowingly perform the inderdicted act" State v. Taylor, 59 Idaho 724, 738, 87 P.2d 454 (1939). Section 18-1509(1) makes it a misdemeanor to attempt to persuade a minor under the age of sixteen (16) to leave the child's home without parental authority. To be found guilty thereunder, Sindak must have the general intent to



perform the act with which he was charged, i.e., attempting to persuade Jeremiah Bradshaw to leave a trailer parked in the backyard of his home without his parent's permission.

This court finds that there was sufficient evidence for the jury to have found such a general intent. No specific criminal intent is a requisite element of the crime charged, nor need it be.

Whether a criminal intent is a necessary element of a statutory offense is a matter of construction to be determined from the language of the statute, in view of its manifest purpose and design, and, where the intent is not made an ingredient of the offense, the intention with which the act is done, or the lack of any criminal intent in the premises, is immaterial.

State v. Scott, 72 Idaho 202, 211, 239 P.2d 258 (1952), quoting State v. Sterrett, 35 Idaho 580, 583, 207 Pac. 1071 (1922). It is apparent that the Idaho legislature made the acts proscribed in section 18-1509(1) a crime without any specific intent requirement. In this sense, the statute is little different from I.C. § 16-1817, to wit, aiding, causing or encouraging

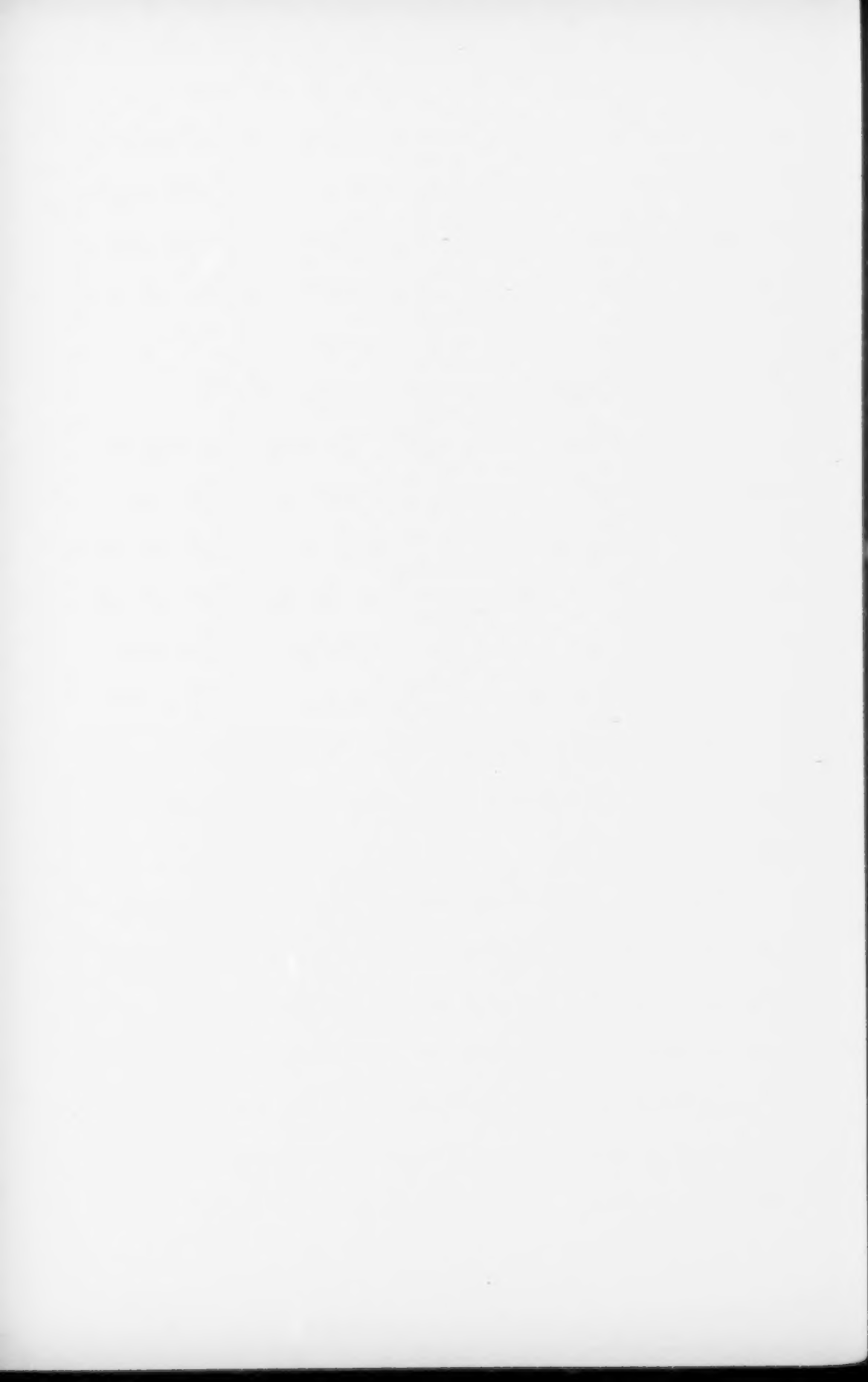


a child to come within purview of the Youth Rehabilitation Act. For example, a violation could occur by simply keeping a child out past curfew against or without proper parental permission. The lack of specific intent alone does not invalidate the statute.

VOID FOR VAGUENESS

That section 18-1509(1) is void for vagueness is Sindak's argument. Specifically, Sindak argues the statute provides no notice as to what conduct is forbidden or considered to be criminal and as presently written would make even the most innocent of conduct a crime. The state argues that the statute is both clear and definite and properly proscribes inappropriate conduct.

The void for vagueness challenge implicates the due process clauses of the Fourteenth Amendment of the United States Constitution and Article One, Section 13 of the Idaho Constitution. While greater protection may be afforded individuals under the state constitution than under the federal constitution, the rules



governing facial challenges to our statutes under either the Idaho or the federal due process clauses are basically the same. State v. Newman, 108 Idaho 5, 10 n. 6, 696 P.2d 856 (1985).

Sindak appears to be making a facial challenge to the broad application of section 18-1509(1) as well as its alleged vague standards. When a facial attack is made on a statute as to its overbreadth and its vagueness, the court must first consider the issue of overbreadth. Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494 (1982). To be unconstitutionally overbroad, a statute must intrude upon a substantial amount of constitutionally protected conduct. Newman, 108 Idaho at 11. Unless a first amendment right is implicated, there is a strong policy against applying the overbreadth doctrine in a facial constitutional challenge. Id.

Sindak claims that the law would criminalize the innocent act of asking a child in for a sugar cookie by a "Grandma Moses." Presumably,

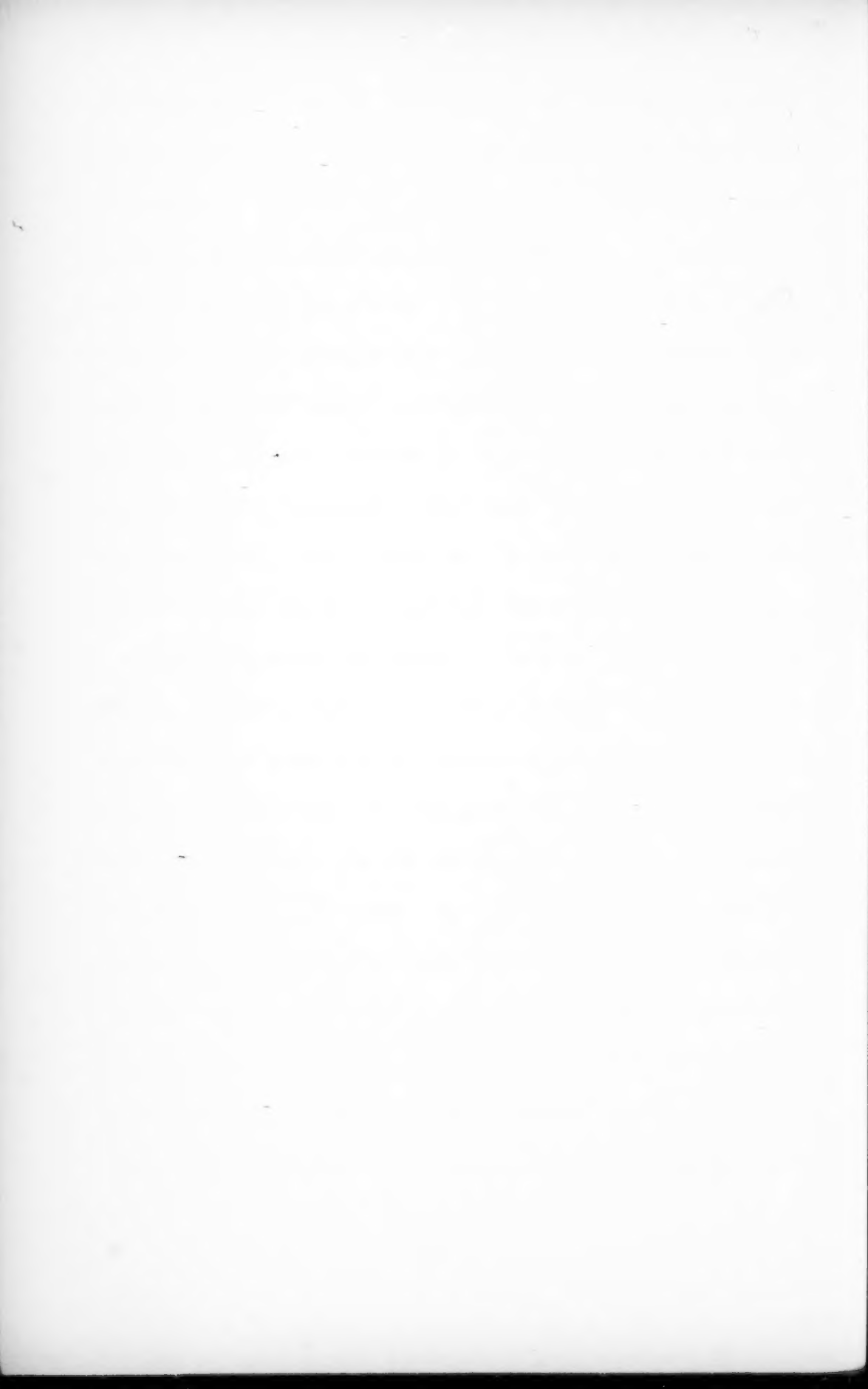


this would implicate the right of free association, generally protected by the First Amendment to the United States Constitution. However, section 18-1509(1) is not as broad as Sinda suggests. To be found guilty under its strictures, a person must not only engage in one of the proscribed acts (attempt to persuade or persuade a minor child under the age of sixteen (16) to leave his home or school; or to enter a vehicle or building; or to enter a structure, enclosed area or alley with the intent to conceal the child from public view); but that person must also do the proscribed act without proper authority. The proper authority may come from the custodial parent of the child, the State of Idaho or one of its subdivisions, or one having legal custody of the child. In addition, an exception exists for the purpose of rendering aid or assistance to the child.

The welfare of children is a legitimate state concern. Matter of Adoption of McMullen, 691 P.2d 17 (Kan. 1984). The stated legisla-



tive purpose of section 18-1509 is "[t]o provide statutory authority to assist our Law Enforcement officers, in protecting the children of our State. Statement of Purpose, Senate Bill 1090 (1985) (enacted and codified as Idaho Code § 18-1509). Certainly, the state has an interest in protecting children from abuses other than sexual. Neither Grandma Moses, nor any other individual, has the inherent right to do the proscribed acts unless that person has expressed or implied authority from the parent, custodian, or state. Such permission may be implied when the parent has permitted the practice in the past without objection; or has allowed the child to engage in activities, such as delivering newspapers, which customarily requires the child to go into other people's homes; or would otherwise acquiesce to such conduct. (See also I.C. § 18-201(1), ignorance or mistake of fact which disproves any criminal intent). The burden is on the State to show that authority, express or implied, has not



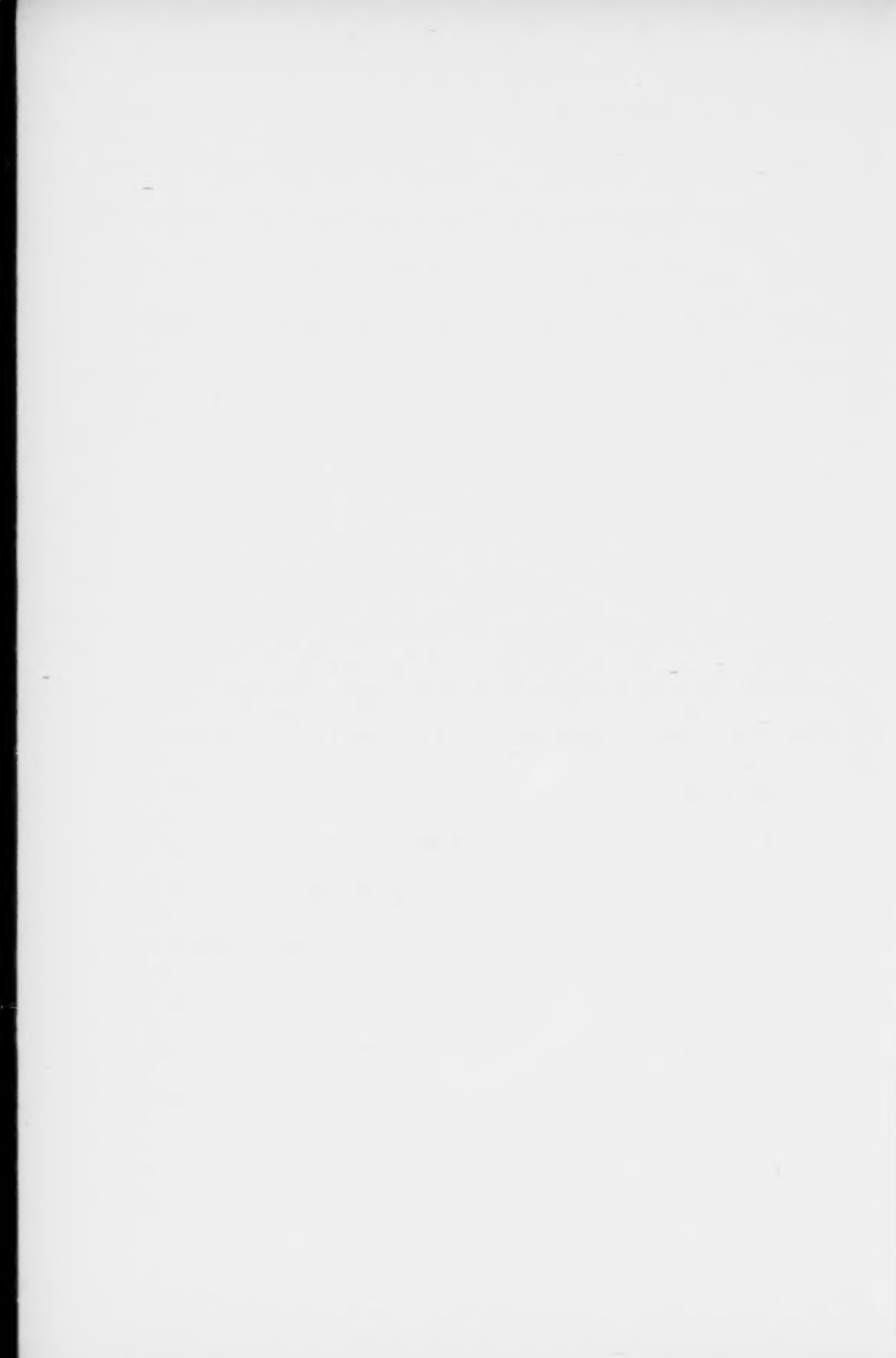
been granted. But when Grandma Moses knows she had no right to ask the child into her home because the parent would object and yet attempts to persuade or persuades the child to enter her home, then she may be found guilty under the law.

The evidence adduced at trial was more than sufficient to establish that Sindak had no authority, either express or implied, to persuade Jeremiah Bradshaw to leave the trailer, and that he knew that Jeremiah's parents would object to his actions, but attempted the proscribed act nonetheless. Indeed, at trial Sindak denied any conversation relating to persuading Jeremiah to leave the trailer and watch T.V. at his house. The jury is the final arbiter of such totally conflicting versions. Sindak had no inherent constitutional right to do what he attempted, nor would anyone else. Section 18-1509(1) does not fail for overbreadth.

The void for vagueness standard "requires that a penal statute define a criminal offense with sufficient definiteness that ordinary



people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." Schwartz-miller v. Gardner, 567 F.Supp. 1371, 1372 (D. Idaho 1983), reversed in part on other grounds, 752 F.2d 1341 (9th Cir. 1984). Sindak has not alleged that any of the words of section 18-1509(1) are ambiguous as to meaning but that the statute, read as a whole, does not put a defendant on notice of what conduct is proscribed. However, "[i]n determining the sufficiency of a statute, the words of the questioned statute should not be evaluated in the abstract but should be considered with reference to the particular conduct of the defendant." State v. Lenz, 103 Idaho 632, 634, 651 P.2d 566 (App.Ct. 1982). In the context and circumstances of this case, the statute gave Sindak sufficient notice that attempting to persuade Jeremiah Bradshaw to leave his home without parental authority would subject him to the penalty of the law. As applied to Sindak, section 18-1509(1) is not void for vagueness.



THE MEANING OF "HOME"

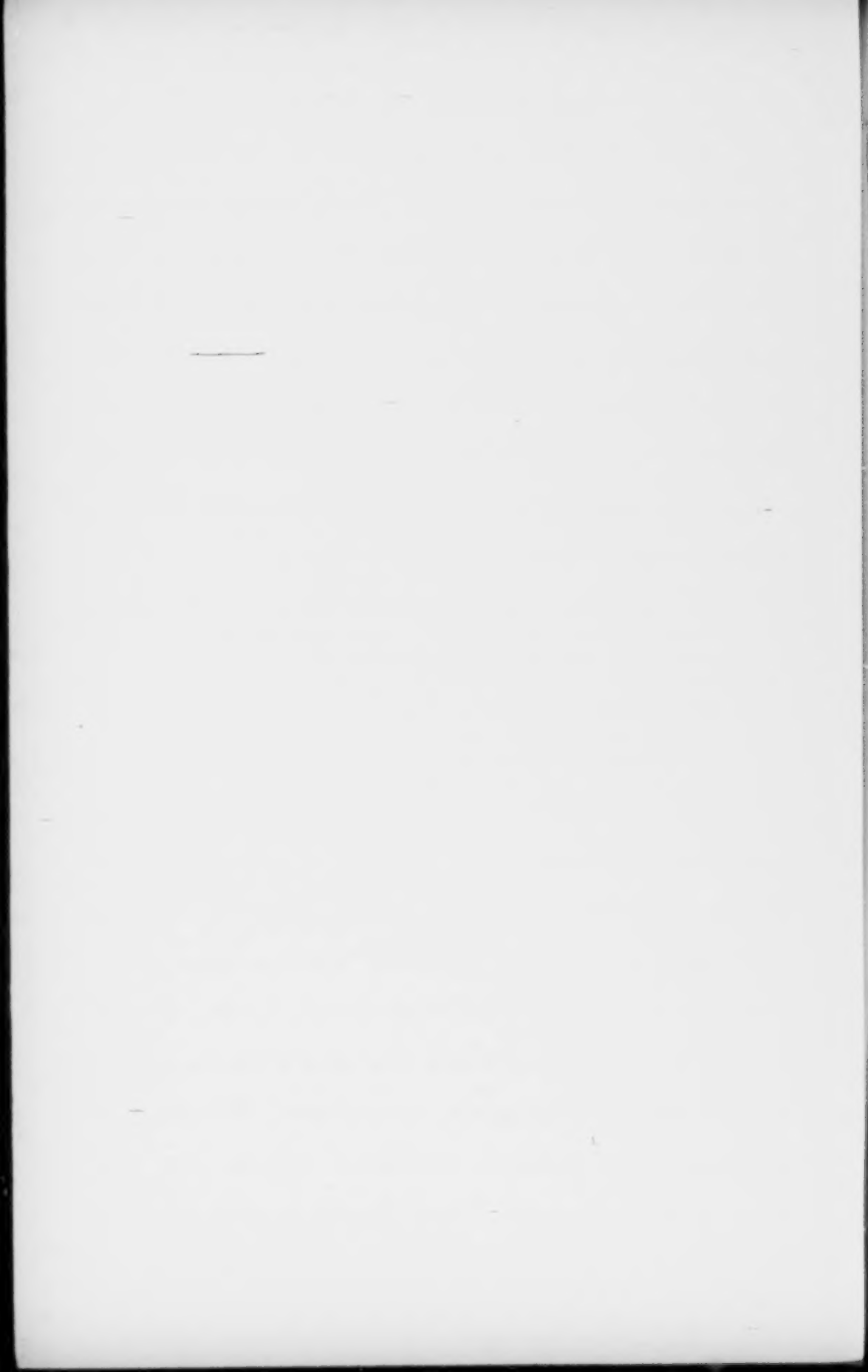
Next, Sindak argues that § 18-1509(1)'s reference to "home" should be narrowly construed to mean the fixed residence of the family, and that since Jeremiah Bradshaw was in a trailer just next to the Bradshaw residence at the time of the incident, he did not attempt to persuade Jeremiah to leave his home as required by the statute. The trial court judge issued a jury instruction which read as follows:

It is the law in the State of Idaho that buildings and other shelters, whether permanent or mobile, not connected to a dwelling but upon the same property and located close to it and used in conjunction with it take on the attributes of the dwelling and are considered a part of it.

Instruction Number 9. The judge ruled that in his view, the word "home" and the word "dwelling" were synonymous in that instruction.

Partial Transcript of Jury Trial, p.76, 1.4-5.

This court endorses the trial judge's view. In an analogous situation, the meaning of "home" for fourth amendment search and seizure questions has traditionally been defined

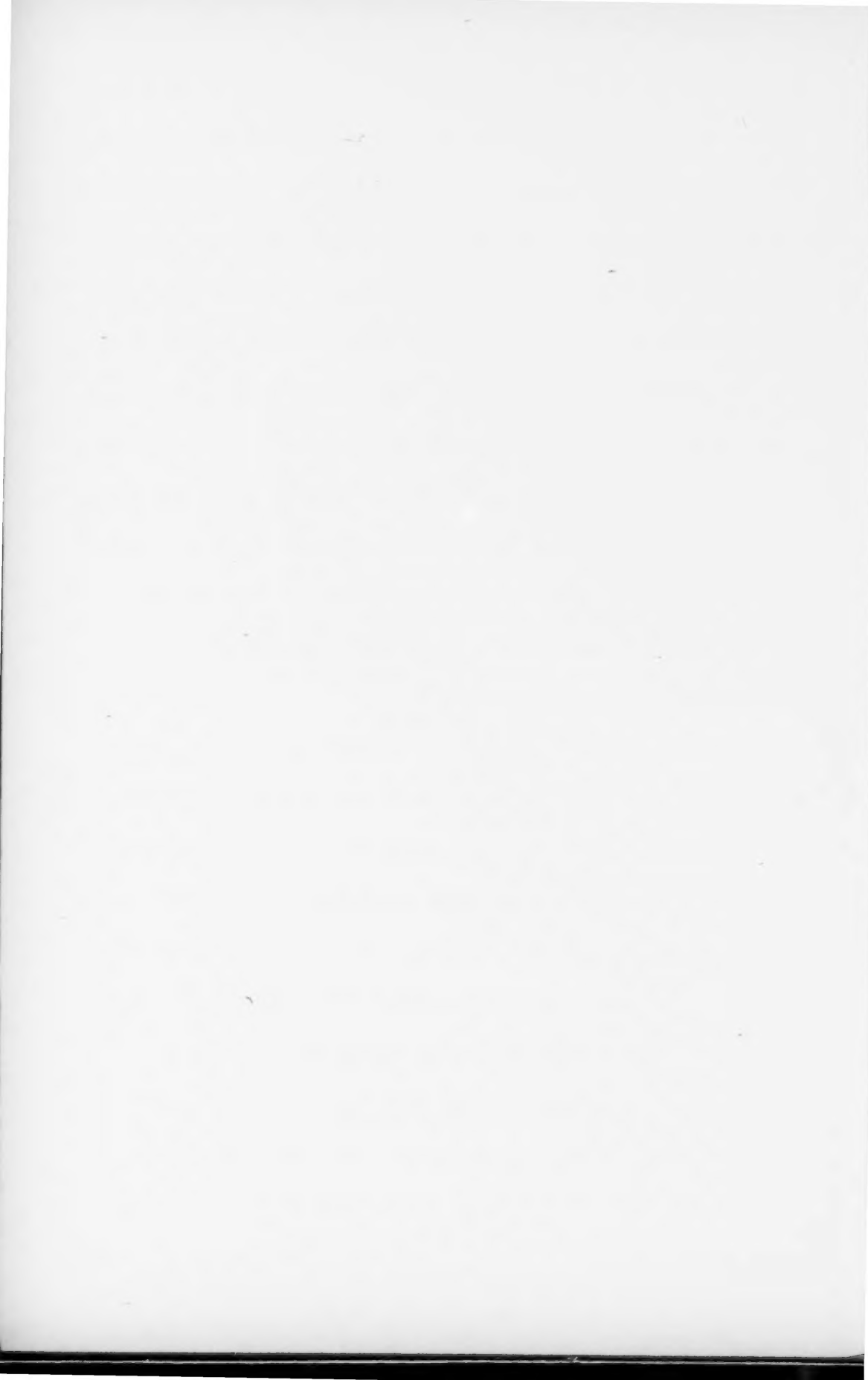


to include the curtilage. W. LaFave & J. Israel, Criminal Procedure § 3.2(c)(1985). The curtilage is commonly defined as "[t]he enclosed space of ground and buildings immediately surrounding a dwelling house." Black's Law Dictionary 346 (5th ed. 1969). In enacting section 18-1509, it is reasonable to assume that the legislature did not intend to limit the application of the word "home" only to the physical structure of a house, but also intended to extend the child protection statute to include any dwelling area immediately within the curtilage.

Here, the trailer in which Jeremiah Bradshaw was spending the night was in the yard of the Bradshaw residence, only ten to twelve feet from his parent's bedroom window. Partial Transcript of Jury Trial at p.42, 1.14-15. "Home," as used in section 18-1509(1)(a), certainly includes this circumstance.

LOCATION OF THE CRIME

Finally, Sindak argues that the state failed to prove at trial that the crime occurred



in Ada County. Both Richard Bradshaw and Carol Bradshaw, father and mother of Jeremiah Bradshaw, testified that they lived at 3460 Jullion Street in the City of Boise and that the incident in question occurred at that address. Partial Transcript of Jury Trial at 18 and 35. The trial judge ruled that such testimony was sufficient to establish that the crime occurred in Ada County. Id. at 54. This court agrees.

CONCLUSION

Accordingly, the conviction of Edward P. Sindak for the violation of Idaho Code § 18-1509 is affirmed. The case is remanded back to the Magistrate Division of District Court for enforcement of the Judgment.

IT IS SO ORDERED This 9th day of February, 1987.

ALAN M. SCHWARTZMAN,
District Judge